

No. 15055.

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

---

BEAUMONT SILVERTON, individually and as a member,  
representative and Secretary of Teamsters Local Union  
No. 898, affiliated with the International Brotherhood  
of Teamsters, Chauffeurs, Warehousemen and Helpers  
of America and the American Federation of Labor,  
*Appellant,*

*vs.*

VALLEY TRANSIT CEMENT COMPANY, INC., a corporation,  
*Appellee.*

---

## APPELLANT'S OPENING BRIEF.

---

LIONEL RICHMAN, ESQ.,  
756 South Broadway,  
Los Angeles 14, California,  
*Attorney for Appellant.*

FILED

JUN - 2 1958

PAUL F. O'BRIEN, CLERK



## TOPICAL INDEX

	PAGE
Statement of fact.....	1
Legal proceedings below.....	2
Point of law.....	2
Argument .....	3
I.	
Jurisdiction is granted pursuant to Article III of the Constitution of the United States.....	3
II.	
Such a grant of jurisdiction by Congress does not violate the Constitution .....	5
III.	
Reliance upon the law of the several states in enforcing contracts is not a bar to federal jurisdiction.....	6
IV.	
Broad interpretation of Section 301 is part of the comprehensive plan of enforcement.....	8
V.	
The Westinghouse decision is inapplicable to this case.....	10
VI.	
Under California law, the complaint stated facts warranting relief .....	15
Conclusion .....	17

# TABLE OF AUTHORITIES CITED

CASES	PAGE
American F. of L. v. Western Union, 179 F. 2d 535.....	13
Association of Westinghouse Salaried Employees v. Westinghouse Corporation, 348 U. S. 437.....	2, 10, 11, 12, 14
Bernhardt v. Polygraph Co., 100 L. Ed. (Adv.) 203.....	7
Bromberg v. Signal Gasoline Corp., 130 Cal. App. 469.....	15
Colgate-Palmolive-Peet Co. v. N. L. R. B., 338 U. S. 355, 94 L. Ed. 161.....	6
Erie R. Co. v. Tompkins, 304 U. S. 64, 82 L. Ed. 1188.....	8
Guaranty Trust Co. v. York, 326 U. S. 99, 89 L. Ed. 2079.....	8
Industrial Trades Union v. Woonsocket Dyeing Co., 122 Fed. Supp. 872 .....	6
Insurance Agents' Int. Union v. Prudential Ins. Co., 122 Fed. Supp. 869 .....	6
International Woodworkers v. McCloud River Lumber Co., 119 Fed. Supp. 475.....	7
J. I. Case Co. v. N. L. R. B., 321 U. S. 332.....	12
Joint Council of Dining Car Employees v. New York Central Railway, 9 Fed. Rules Serv. 17 b. 31, Case No. 1.....	14
Levy v. Superior Court, 15 Cal. 2d 692.....	16
Local 937 Int. Union etc. v. Royal Typewriter Co., 88 Fed. Supp. 669 .....	13
Mercury Oil Ref. Co. v. Oil Workers Int. Union, 187 F. 2d 980 .....	8
Meserve v. Superior Court, 2 Cal. App. 2d 468.....	15
Milk & Cream Drivers etc. Union v. Gillespie, 203 F. 2d 650.....	14
Modine Mfg. Co. v. Grand Lodge IAM, 216 F. 2d 326.....	14
National Hairdressers' Association v. Pilad Co., 7 Fed. Rules Serv. 17 a. 151, Case No. 1.....	15
National Labor Relations Board v. American Nat. Ins. Co., 343 U. S. 395, 96 L. Ed. 1027.....	8
Robinson v. Raquet, 1 Cal. App. 2d 533.....	15
Schatte v. Int. Alliance, 182 F. 2d 158, cert. den. 340 U. S. 827 .....	6

	PAGE
Shell v. Schmidt, 126 Cal. App. 2d 279.....	16
Silva v. Mercier, 33 Cal. 2d 704.....	16
Silverton v. Rich, 119 Fed. Supp. 434.....	14
Sublett v. Henry's etc. Lunch, 21 Cal. 2d 273.....	16
Taylor v. Black Diamond Coal Mine Co., 86 Cal. 589.....	16
Teater v. Good Hope Development Corporation, 55 Cal. App. 2d 459 .....	16
Terminal R. Asso. v. Brotherhood of R. Trainmen, 318 U. S. 1, 87 L. Ed. 571.....	9
United Electrical etc. v. Oliver Corp., 205 F. 2d 376.....	6
United Electrical Workers v. General Electric (Apr. 25, 1956), (..... F. 2d.....).....	13
United Protective Workers v. Ford Motor Co., 194 F. 2d 997....	13
United Shoe Workers v. LeDanne Footwear, Inc., 83 Fed. Supp. 714 .....	14
United Steel Workers v. Shakespeare Co., 84 Fed. Supp. 267....	13

#### REPORTS

House Report No. 245 on H. R. 3020.....	3, 4
Minority Report No. 245 on H. R. 3020.....	4
Senate Minority Report No. 105, Pt. 2 on S. 1126.....	4

#### RULES

Federal Rules of Civil Procedure, Rule 17.....	14, 15
--	--------

#### STATUTES

Civil Code, Sec. 954.....	15
Civil Code, Sec. 3360.....	15
Labor Code, Sec. 1126.....	16
Labor-Management Relations Act of 1947:	
Sec. 8(1) .....	6
Sec. 8(3) .....	6
Sec. 301.....	3, 4, 6, 7, 8, 9, 10, 11, 12, 16
Sec. 301(a) .....	2, 3
United States Constitution, Art. III.....	3, 5, 6



No. 15055.

IN THE  
**United States Court of Appeals**  
FOR THE NINTH CIRCUIT

---

BEAUMONT SILVERTON, individually and as a member,  
representative and Secretary of Teamsters Local Union  
No. 898, affiliated with the International Brotherhood  
of Teamsters, Chauffeurs, Warehousemen and Helpers  
of America and the American Federation of Labor,  
*Appellant,*

*vs.*

VALLEY TRANSIT CEMENT COMPANY, INC., a corporation,  
*Appellee.*

---

**APPELLANT'S OPENING BRIEF.**

---

**Statement of Fact.**

Appellant's complaint consisted of 26 causes of action. Only the first 13 are considered by this appeal. Each of the first 13 causes of action stated substantially the following facts:

Appellant, Beaumont Silvertton, was an officer and member of Teamsters Local Union No. 898, an unincorporated association, and brought the action in a representative capacity on behalf of Local 898.

Appellee, Valley Transit Cement Company, Inc., was a corporation whose activities affected interstate commerce.

Sometime prior to the commencement of the action, Local 898 and Valley had been parties to a series of collective bargaining agreements fixing minimum wages, hours and conditions of employment. These agreements were made by Local 898 on its own behalf, and for the benefit of the employees of Valley.

Notwithstanding said agreements, Valley failed and neglected to pay said employees the minimum wage or the overtime rates provided in the collective bargaining agreements. Prior to the commencement of the action, the claims of 13 individual employees were assigned to Local 898.

### **Legal Proceedings Below.**

Local 898 commenced an action in the United States District Court for an accounting and damages, invoking the jurisdiction of the court under Section 301(a) of the Labor Management Relations Act of 1947.

Acting in reliance upon the decision of the United States Supreme Court in the case of *Association of Westinghouse Salaried Employees v. Westinghouse Corporation*, 348 U. S. 437, the court below, on its own motion, dismissed the action for lack of jurisdiction.

It is from the judgment of dismissal of the first 13 causes of action that Local 898 prosecutes this appeal.

### **Point of Law.**

Does the United States District Court have jurisdiction to hear and determine an action by a Union for damages for breach of a collective bargaining agreement under Section 301(a) of the Labor Management Relations Act of 1947, absent diversity of citizenship?

## ARGUMENT.

### I.

#### Jurisdiction Is Granted Pursuant to Article III of the Constitution of the United States.

Jurisdiction in a Section 301 case is not based upon diversity of citizenship but upon the provision in Article III of the Constitution of the United States that extends the judicial power of the United States to cases "arising under . . . the laws of the United States."

The plain language of the statute shows an intent to remove the limitations of amount in controversy and diversity of citizenship as conditions for exercise of federal jurisdiction. Indeed, it was the understanding of both the proponents and opponents of the Act that such would be the effect of Section 301(a).

An examination of *Legislative History of the Labor Management Relation Act of 1947* shows clearly that Congress intended jurisdiction to lie with the federal courts to enforce collective bargaining agreements affecting commerce.

In the report submitted by Mr. Fred Hartley, co-sponsor of the Act, to accompany H. R. 3020, the House of Representatives' version of the Labor Management Relations Act, the purpose of Section 301 was explained:

"In brief outline, the bill accomplishes the following:

\* \* \* \* \*

"(18) It makes labor organizations equally responsible with employers for contract violations and provides for suit by either against the other in the United States district courts." (P. 297.)

This intent to broaden the federal court's jurisdiction was emphasized in House Report No. 245 on H. R. 3020 which pointed out that an action might be brought in any district court of the United States “. . . if the agreement affects commerce, or the court otherwise has jurisdiction of the cause.” (Pp. 336-337.)

The opponents of the Act, in resisting its passage in the House claimed that the federal courts would be overburdened by extensive litigation due to the broadening of federal jurisdiction. In Minority Report No. 245 on H. R. 3020, the minority warned that,

“. . . the bill would apparently give the Federal Courts jurisdiction of disputes over union agreements affecting commerce regardless of diversity of citizenship of the parties.” (P. 400.)

Senator Taft, in an extensive discussion of the scope of Section 301, demonstrated the purpose of Section 301 to grant a uniform forum for the trial of suits arising out of the breach of collective bargaining agreements affecting interstate commerce.

In Senate Minority Report No. 105, Pt. 2 on S. 1126, it was said:

“The Federal Courts have always had jurisdiction to entertain suits for breach of collective—bargaining contracts and have awarded money damages where the amount in controversy fulfills the present \$3,000 requirement and diversity of citizenship exists. *Nederlandsche Amerikaanische Stoomvaart Maatschappij v. Stevedores and Longshoremen's Benevolent Society* (1920, 265 Fed. 397). It is

apparent from the language of Section 301 that no change is made in the application of State law for this purpose. The section states that—

“ ‘suits for violation of contracts concluded \* \* \* in an industry affecting commerce \* \* \* may be brought in any district court of the United States \* \* \*.’

“Every district court would still be required to look to State substantive law to determine the question of violation. This section does not, therefore, create a new cause of action but merely makes the existing remedy available to more persons by removing the requirements of amount in controversy and of diversity of citizenship where interstate commerce is affected.” (P. 475.)

## II.

### **Such a Grant of Jurisdiction by Congress Does Not Violate the Constitution.**

The Labor Management Relations Act is a comprehensive plan by Congress to protect the free flow of goods in interstate commerce from disruption due to labor unrest. With the power to legislate goes the power to enforce such legislation, and any exercise of the power to enforce is protected by Article III as a law arising under the laws of the United States. Such has been the holding of the courts.

“Defendants say that Section 301(a) creates no new substantive right or liability, and therefore this action is not one arising under the Constitution or laws of the United States. On this premise they contend the section is void as an attempt by Congress to extend jurisdiction of Federal courts beyond Con-

stitutional limits. Article III, Section 2, of the Constitution. This contention has been denied by every court which has considered it."

*United Electrical etc. v. Oliver Corp.*, 205 F. 2d 376;

*Schatte v. Int. Alliance*, 182 F. 2d 158, 164, 165, cert. den. 340 U. S. 827.

### III.

#### Reliance Upon the Law of the Several States in Enforcing Contracts Is Not a Bar to Federal Jurisdiction.

Since the overruling of *Swift v. Tyson*, the federal courts have been bound to consider the law of the place in determining the enforceability of contracts.

Thus, in determining the effect of a closed shop contract to save an employer from charges of unfair labor practises under Sections 8(1) and 8(3) of the Act, the Supreme Court looked to the law of California to determine the validity of the contract.

*Colgate-Palmolive-Peet Co. v. N. L. R. B.*, 338 U. S. 355, 361, 94 L. Ed. 161, 168.

The law of Pennsylvania was applied in a Section 301 action to determine whether certain issues should be arbitrated prior to judicial action.

*Insurance Agents' Int. Union v. Prudential Ins. Co.*, 122 Fed. Supp. 869.

Construction of a contract in a Section 301 action required reference to the laws of Rhode Island.

*Industrial Trades Union v. Woonsocket Dyeing Co.*, 122 Fed. Supp. 872.

Enforcement of contributions to a Health & Welfare program are limited by the California law requiring individual authorizations for deductions from wages.

*Int. Woodworkers v. McCloud River Lumber Co.*,  
119 Fed. Supp. 475, 485.

To avoid belaboring the point further, it is submitted that the Labor-Management Relations Act is designed to promote industrial peace by encouraging the making of voluntary agreements governing relations between unions and employers. The Act does not regulate the substantive terms governing wages, hours and working conditions which are incorporated in the agreement.

This attention to the *lex loci* would exist even if diversity of citizenship were involved, and therefore cannot be a serious handicap to the broad enforcement of Section 301.

“We deal here with a right to recover that owes its existence to one of the States, not to the United States. The federal court enforces the state—created right by rules of procedure which it has acquired from the Federal Government and which therefore are not identical with those of the state courts.”

*Bernhardt v. Polygraph Co.*, 100 L. Ed. (Adv.)  
pp. 203, 207.

However, despite the difference of procedure, a federal court enforcing a state-created right is only another court of the State. The effect of Section 301 is merely to provide a federal forum for enforcement of contracts affecting commerce pursuant to the laws of the states.

Under those circumstances, the Federal Court looks to the law of the State.

*Guaranty Trust Co. v. York*, 326 U. S. 99, 108-111, 89 L. Ed. 2079, 2086, 2087;

*Erie R. Co. v. Tompkins*, 304 U. S. 64, 82 L. Ed. 1188.

Section 301 does not purport to give the federal courts any different or additional power than a state court would have, it only provides a uniform forum to enforce a uniform right.

*Mercury Oil Ref. Co. v. Oil Workers Int. Union*, 187 F. 2d 980.

#### IV.

### **Broad Interpretation of Section 301 Is Part of the Comprehensive Plan of Enforcement.**

The national interest under the Act is the broad aim to prevent industrial strife leading to interruption of the production and flow of goods in interstate commerce.

For this reason, the Act not only imposes the duty to negotiate, but provides the machinery for enforcement of the contract which is the end result of those negotiations. A strike to enforce a contract is as disruptive of interstate commerce as a strike demanding the contract.

“Enforcement of the obligation to bargain collectively is crucial to the statutory scheme.”

*N. L. R. B. v. American Nat. Ins. Co.*, 343 U. S. 395, 402, 96 L. Ed. 1027, 1036.

This aim of federal statutes requiring negotiations of contracts between unions and employers is well established. State statutes and decisions determine the interpretation

of the contract, since, generally, the specific provisions of the contract are of no moment to the national interest. However, the enforcement of such agreement is of paramount importance since,

“The federal interest that is fostered is to see that disagreement about conditions does not reach the point of interfering with interstate commerce.”

*Terminal R. Asso. v. Brotherhood of R. Trainmen*, 318 U. S. 1, 6, 87 L. Ed. 571, 577.

Prior to the 1947 amendments to the National Labor Relations Act, defective enforcement was a glaring flaw. The National Labor Relations Board had the power to require unions and employers to deal fairly with each other, and to call upon the process of the federal court to enforce its orders. However, once this enforced fair dealing burgeoned into a collective bargaining agreement, the power of the Board ended.

Thereafter, if either party were of a mind to violate the agreement, enforcement was almost unavailable, due to multitudinous procedural pitfalls encountered in the courts of the states.

For the union, the only remedy was to strike to enforce the breached contract. This would cause the very disruption of commerce the Act was designed to prevent.

By the passage of Section 301 of the 1947 Act, Congress closed that breach by allowing the federal courts to carry out the intent of Congress and the purposes of the Act by preventing industrial warfare in all phases of dealings between unions and employers.

This uniform enforcement gives full effect to the integrated statutory scheme.

V.

**The Westinghouse Decision Is Inapplicable to This Case.**

The Motion to Dismiss was predicated upon the decision of the United States Supreme Court in the case of *Association of Westinghouse Salaried Employees v. Westinghouse Corporation*, 348 U. S. 437, decided in 1954. In considering the application of that decision to the instant case, it is necessary to examine the pleadings in both cases.

The *Westinghouse* case was a purported class action brought by the union on behalf of certain individuals who were not parties to the proceeding seeking to obtain an accounting and payment to the employees of monies allegedly due.

In the instant case, there has been an assignment by the employees to the union of their claims against the company for monies due the employees because of the breach by the company of the collective bargaining agreement which was part of the contract of hire. The action in the instant case is by the union on its own behalf for damages for breach of the collective bargaining agreement. Under Section 301 of the Labor Management Relations Act, the union has the right to sue for breach of the collective bargaining agreement. The assignment added to the element of damages and no more.

Thus, factually, there is this very basic difference between the two cases. In the *Westinghouse* case, the action was brought by the union seeking to enforce rights which lay wholly with the employees. In the instant case, we have an action by the union for breach of the collective bargaining agreement and seeking the damages for the

breach of that agreement which have been assigned to the union by the employees to whom the damages would otherwise be due.

An examination of the decision in the *Westinghouse* case will show that in the opinion of the numerical majority of the court, the instant complaint states a cause for relief and vests jurisdiction in the United States District Court.

The majority opinion written by Justice Frankfurter in which Justices Burton and Minton joined, holds that Section 301 was a little more than a clarification of public policy or procedure.

However, Chief Justice Warren and Justice Clark concurred in the judgment, but in a separate opinion held that the contract of hire was personal to the employee and since the employee was not a party to the action, the union had no standing to prosecute the claim.

Justice Reed, in a separate concurring opinion, also held that the action was properly one for breach of contract of hire, and that since the union had no interest in that contract, it could not bring the action.

Justices Douglas and Black dissenting, agreed with Justice Reed that this action was one for breach of contract of hire, but maintained that the union had a right to bring the action just as the union had the right to process grievances for employees.

So, in the instant case, where the damages under the contract of hire have been assigned to the union which brings its action for breach of the collective bargaining agreement, it would appear that Justices Clark, Reed, Douglas, Black and Chief Justice Warren would hold

that the action was properly brought, and Justices Frankfurter, Burton and Minton would be in the minority.

The collective bargaining agreement obligates the employer to include in the contracts of hire with each employee the terms and conditions which had been settled between the union and the employer.

“Collective bargaining between employer and the representative of a unit, usually a union, results in an accord as to terms which will govern hiring and work and pay in that unit. The result is not, however, a contract of employment except in rare cases; no one has a job by reason of it and no obligation to any individual ordinarily comes into existence from it alone.

\* \* \* \* \*

“After the collective trade agreement is made, the individuals who shall benefit by it are identified by individual hirings. The employer, except as restricted by the collective agreement itself and except that he must engage in no unfair labor practice or discrimination, is free to select those he will employ or discharge. But the terms of the employment already have been traded out.”

*J. I. Case Co. v. N. L. R. B.*, 321 U. S. 332, 334-335.

The effect of the *Westinghouse* decision, reflected in all the opinions of the majority justices, was to eliminate from Section 301 jurisdiction a complaint by a union that involves no more than a cause of action which is “peculiar in the individual benefit” or “the uniquely personal right of an employee” or which “arises from

the individual contract between the employer and the employee.” 348 U. S. at 460, 461, 464.

“That holding was not aimed at any cause of action or remedy that appropriately pertains to the union as an entity, particularly one which an individual employee may have no equal power to enforce.”

*United Electrical Workers v. General Electric*  
(Apr. 25, 1956), ..... F. 2d .....

Thus, it has been held that the breach of the collective bargaining agreement by the employer is actionable in a suit brought by the union.

(Modification of a pension plan contained in a collective bargaining agreement.)

*A. F. of L. v. Western Union*, 179 F. 2d 535.

(Breach of wage provisions.)

*Local 937 Int. Union etc. v. Royal Typewriter Co.*, 88 Fed. Supp. 669.

(Discharge of employee.)

*United Protective Workers v. Ford Motor Co.*,  
194 F. 2d 997.

For actions upholding the jurisdiction of the federal courts to entertain damage actions for breach of contract by unions against employers absent diversity of citizenship, see:

(Wrongful termination of collective bargaining agreement.)

*United Steel Workers v. Shakespeare Co.*, 84 Fed. Supp. 267.

(Refusal to carry out terms of oral agreement.)

*United Shoe Workers v. LeDanne Footwear, Inc.*,  
83 Fed. Supp. 714.

(Action for damages for loss of dues and initiation fees caused by failure of employer to enforce union shop provisions of contract.)

*Silverton v. Rich*, 119 Fed. Supp. 434;

*Modine Mfg. Co. v. Grand Lodge IAM*, 216 F.  
2d 326.

(Refusal to abide by arbitration award.)

*Milk & Cream Drivers etc. Union v. Gillespie*,  
203 F. 2d 650.

In deciding the *Westinghouse* case, the majority of the justices merely followed the Federal Rules of Civil Procedure which provide that every action shall be prosecuted by the real party in interest.

Rule 17, Federal Rules of Civil Procedure.

In interpreting the rules where the question of the capacity of a union to sue on behalf of its members has been raised, the courts have made the very same differentiation which appellant requests this Honorable Court to make. Thus, where a union sues to recover wages due its members, the court has held in accordance with the *Westinghouse* decision that the union was not the real party in interest not being a party to the contract of hire.

*Joint Council of Dining Car Employees v. New York Central Railway*, 9 Fed. Rules Serv. 17 b. 31, Case No. 1.

On the other hand, again applying Rule 17, the court has held that an association may sue as assignee of its members individual claims even though it would not have had capacity to sue in its own right.

*National Hairdressers' Association v. Pilad Co.*,  
7 Fed. Rules Serv. 17 a. 151, Case 1.

## VI.

### Under California Law, the Complaint Stated Facts Warranting Relief.

Even in the absence of the allegation of the assignments, Local 898 had stated a cause of action warranting relief, without any proof of actual damages.

“When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.”

Cal. Civ. Code, Sec. 3360.

In an action for breach of contract, nominal damages are presumed to follow as a conclusion of law from proof of the breach without evidence of the amount of damages.

*Robinson v. Raquet*, 1 Cal. App. 2d 533;

*Bromberg v. Signal Gasoline Corp.*, 130 Cal. App. 469.

By the assignments, the appellant did no more than increase its measure of ascertainable damages.

This procedure is warranted by California law since a cause of action arising out of a contract is assignable.

Civ. Code, Sec. 954;

*Meserve v. Superior Court*, 2 Cal. App. 2d 468.

Money due for services rendered has such an interest that it may be assigned.

*Taylor v. Black Diamond Coal Mine Co.*, 86 Cal. 589.

A claim may be assigned for the purpose of collection, and the assignee has a sufficient interest in the claim to maintain an action in his own name.

*Teater v. Good Hope Development Corporation*, 55 Cal. App. 2d 459.

Under the California Labor Code, any collective bargaining agreement is enforceable at law or in equity, and a breach is subject to the same remedies as are available on other contracts.

Cal. Labor Code, Sec. 1126.

A collective bargaining agreement is a third party beneficiary contract (*Sublett v. Henry's etc. Lunch*, 21 Cal. 2d 273) and the union, as the contracting party, may sue for its breach. (*Shell v. Schmidt*, 126 Cal. App. 2d 279.)

While the collective bargaining agreement and the contract of hire are two separate agreements, one enters into and becomes a part of the other by operation of law.

*Levy v. Superior Court*, 15 Cal. 2d 692.

And, a breach of the contract of hire also constitutes a breach of the collective bargaining agreement and may be the basis for an action by the union.

*Silva v. Mercier*, 33 Cal. 2d 704.

### Conclusion.

Appellant submits, therefore, that this is precisely the type of action considered by Congress in enacting Section 301, and in furtherance of the comprehensive plan to protect interstate commerce, intended jurisdiction to be exercised by the federal courts.

In dismissing the first 13 causes of action, the court below undid the work of Congress, and returned the enforcement of collective bargaining agreements to the historical chaos of industrial warfare.

Respectfully submitted,

LIONEL RICHMAN,

*Attorney for Appellant.*

